

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

MARKELVIN RENARD McHENRY §

v. § Civil Action No. 5:23-CV-50-RWS-JBB

UNITED STATES OF AMERICA §

ORDER

Before the Court is Movant Markelvin McHenry's motion to vacate or correct his federal sentence pursuant to 28 U.S.C. § 2255. Docket No. 1. The case was referred to United States Magistrate Judge Boone Baxter in accordance with 28 U.S.C. § 636.

On June 13, 2025, the Magistrate Judge issued a Report recommending the motion be denied. Docket No. 18 at 6. The Magistrate Judge held Movant's claims for § 2255 relief are without merit. *Id.* at 5. According to the Magistrate Judge, Movant is not entitled to a certificate of appealability because Movant has not made a substantial showing of the denial of a constitutional right or shown that reasonable jurists could debate whether his motion to vacate or correct sentence should have been resolved in a different manner or that the issues presented are adequate to deserve encouragement to proceed further. *Id.* at 6.

Movant received a copy of this Report on June 20, 2025, but filed no objections. *See* Docket No. 20. Because no objections have been received, Movant is barred from *de novo* review by the District Judge of the Magistrate Judge's proposed findings, conclusions and recommendations. Moreover, except upon grounds of plain error an aggrieved party is barred from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *See Duarte v. City of Lewisville*, 858 F.3d 348, 352 (5th Cir. 2017); *Arriaga v. Laxminarayan*, Case No. 4:21-CV-00203- RAS, 2021 WL 3287683, at *1 (E.D. Tex. July 31, 2021).

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law").

The Court also concludes that Movant is not entitled to a certificate of appealability. An appeal from a judgment denying post-conviction collateral relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253. The standard for a certificate of appealability requires the movant to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000); *see also Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the movant need not establish that he would prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483–84. Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of the movant, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280–81 (5th Cir.), *cert. denied*, 531 U.S. 849 (2000).

Movant has not shown that any of the issues would be subject to debate among jurists of reason, and the questions presented are not worthy of encouragement to proceed further. Movant has failed to make a sufficient showing to merit the issuance of certificate of appealability, and a certificate of appealability will not be issued. Accordingly, it is

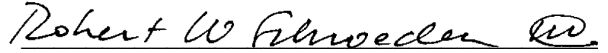
ORDERED that the Report of the Magistrate Judge (Docket No. 18) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the Motion to Vacate, Set Aside or Correct the Movant's Sentence (Docket No. 1) is **DENIED**. It is further

ORDERED that the above-titled cause of action is **DISMISSED WITH PREJUDICE**. It is further

ORDERED that any motions currently pending in this civil action are hereby **DENIED-AS-MOOT**.

So ORDERED and SIGNED this 16th day of July, 2025.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE